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No. 94

In the Supreme Court of the United States

OCTOBER TERM, 1956

FRANK BONETTI, PETITIONER

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 854

FRANK BONETTI, PETITIONER

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 43–45) is reported at 240 F. 2d 624.

JURISDICTION

The judgment of the Court of Appeals was entered on December 27, 1956 (R. 46). The petition for a writ of certiorari was filed on March 25, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner was properly ordered deported under the immigration statute providing for de-

portation of an alien "who was at the time of entering the United States, or has been at any time thereafter" a member of the Communist Party, where he was shown to have been a member of the Communist Party after his original entry but not after his last readmission for permanent residence after a departure from the country.

2. Whether petitioner's disclosure, at the hearing upon his re-entry, of his past Communist Party membership precludes his subsequent deportation upon that ground.

3. Whether the statute is unconstitutional.

STATUTE INVOLVED

As amended by Section 22 of the Internal Security Act of 1950 (64 Stat. 1006), the Act of October 16, 1918 (40 Stat. 1012) provided, at the time involved in this case, as follows:[1]

* * * * *

> Any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *

[1] These statutory provisions were repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279), which recodified and reenacted these provisions without material change. See *id.*, Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C).

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * *.

* * * * *

Section 4 (a) of Section 22 of the 1950 Act provided:

Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the District of Columbia Circuit (R. 46) affirming the judgment of the District Court for the District of Columbia (R. 7–10) in which the District Court upheld an order of deportation against petitioner. The pertinent findings of fact, here undisputed, may be summarized as follows:

Plaintiff is an alien who initially entered the United States in 1923 for permanent residence and was a member of the Communist Party from 1932–1937 (R. 7–8).[2] He departed from the United States

[2] The Immigration and Naturalization Service has found petitioner's membership to be for the years 1932–1936 (R. 13, 15), but one of petitioner's own statements (see Pet. 5) had extended the period into 1937. The record also discloses that petitioner was the head of a Party unit of up to 15 members (R. 33),

in 1937, giving up any rights for permanent residence that he acquired as a result of the 1923 admission, and he returned to the United States in October 1938 (R. 8). Upon the occasion of his return, he disclosed his former membership in the Communist Party to a board of inquiry and was admitted for permanent residence (R. 8).[3]

In 1952, petitioner was ordered deported by the special inquiry officer of the Immigration and Naturalization Service pursuant to a hearing under a warrant of arrest charging deportability upon the basis of petitioner's membership in the Communist Party (R. 3, 5, 8). Petitioner remained mute and refused to testify during the course of the deportation hearing (R. 8).[4] Petitioner's appeal was dismissed by the Board of Immigration Appeals (R. 8).

The Court of Appeals, upholding the order of deportion, pointed out that the statute provided for deportation by reason of membership in the Communist Party after "entry", not after "the last entry". It noted that the statutory definition of an entry was

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and that he fought for the Spanish republic from July 1937 to July 1938 with the Lincoln Brigade (R. 22–23, 32).

[3] The statutory provision for exclusion by reason of the single fact of membership in the Communist Party had not yet been enacted in 1938. This provision was not enacted until the Internal Security Act of 1950 (64 Stat. 1006). Petitioner was at first excluded by the board, but later admitted as a quota immigrant, under bond (R. 12). The record discloses that petitioner also left the United States for one day and reentered in the early summer of 1939 (R. 13, 28).

[4] The government presented its own witnesses to identify petitioner's alien registration form and the testimony in his naturalization investigation which disclosed his membership and past activities in the Communist Party (R. 19–20, 25–31).

"any coming" into the United States, as earlier defined in this Court's holding in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, in 1933.

ARGUMENT

1. Although the statute in plain words provides for deportation in the case of Communist Party membership "at the time of entering the United States, or * * * at any time thereafter" (*supra*, p. 3), petitioner would have it apply as if it read after "*last* entering the United States." The condition which petitioner seeks to add to the statute does violence to the language and the purpose of the enactment. It was rejected by the court below and by the Second Circuit in *United States ex rel. Belfrage* v. *Kenton*, 224 F. 2d 803.[5]

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[5] *Berrebi* v. *Crossman*, 208 F. 2d 498 (C. A. 5), cited by petitioner (Pet. 10), is not in point. There, the alien had concededly not been a Communist Party member either "at the time of entering the United States" in 1948 or at any period after that time. The Court of Appeals there specifically distinguished the *exclusion* provision (which would have applied to Berrebi's membership in Tunisia prior to entering the United States), from the *deportation* provision which required the alien to be a member *at* or *after* entering the United States (208 F. 2d at 499). The Court of Appeals for the District of Columbia Circuit has recently held that one who had been a member of the Communist Party of a foreign country, but had terminated his membership before entry into the United States, was deportable as one who was, in the terms of Section 4 of Section 22 of the 1950 Act, *supra*, p. 3, "a member of any one of the classes of aliens enumerated in section 1 (2)" since past members of *any* Communist Party are in the enumerated classes. *Klig* v. *Brownell*, decided April 4, 1957. On this basis, petitioner would be deportable even if his contention as to last "entry" were correct.

The provision embodies a conclusion by the Congress that the United States should not continue to harbor aliens who, either at the time of entering the United States or after having had the experience of being in this country, have been members of the Communist Party. Past membership in the Communist Party was made a ground for deportation, no matter how long the alien has been here, or how far back his membership (see *Galvan* v. *Press*, 347 U. S. 522). There was, under the 1950 Act, not even the possibility of suspension of deportation. It seems evident, therefore, that Congress did not intend that membership in the Communist Party in the United States should be rendered meaningless, so far as deportation was concerned, because the alien had departed from the country and then returned after the period of his Party membership. And the fact that petitioner's entry in 1938 was as an immigrant rather than as a returning resident alien certainly does not detract from his undesirability under the standards of the 1950 Act.

Both the Second and District of Columbia Circuits relied upon the decision of this Court in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, in which petitioner's pattern of argument was rejected in a reversed form. Volpe's offense was the subject of deportation if committed *before* entry into the United States. Having committed the offense after one entry into the United States but before a later re-entry, he sought to have the words "prior to entry" treated as "prior to the *first* entry." This Court rejected the

attempted departure from the clear and unqualified meaning of the word "entry," stating (289 U. S. at 425):

> [T]he word "entry" * * * includes *any* coming of an alien from a foreign country into the United States whether such coming be the first or *any* subsequent one. * * * [Emphasis added.][6]

This Court's rejection of the attempt to add the word "first" before entry is equally applicable to the present effort to add the word "last" to a statute which uses "entry" in its unqualified form.

Petitioner refers (Pet. 7) to the fact that subdivision (13) of Section 241 (a) of the Immigration and Nationality Act of 1952 provides for the deportation of aliens abetting (for gain) illegal entry of others "prior to, or at the time of *any* entry, or at any time within five years after *any* entry" (emphasis added). He argues that this addition of "any" indicates that, without such language, "after entry" refers only to the last entry. But aside from the fact that this language, which first appeared in the 1952 Act, hardly indicates the intent of Congress in 1950, it seems clear that the primary purpose of this change from the prior law was to reach those who had aided illegal entrants before they—the aiders—had ever come to the United States, and to make sure that the statute covered such aiders no matter at what time they may have carried

[6] See, also, *Lewis* v. *Frick*, 233 U. S. 291, 297; *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, 401; *United States ex rel. Circella* v. *Sahli*, 216 F. 2d 33, 37 (C. A. 7).

on their activities—before, after, or at the time of, any entry of theirs.[7]

2. Petitioner's complaint that his deportation was based upon his own testimony, given "at the hearing at which he was adjudicated admissible" (Pet. 2, 11–12), misconceives both the nature of the hearing to which he refers and the ultimate evidence supporting the deportation. As observed *supra* (p. 4, fn. 3), in 1938—the year of petitioner's re-entry—former membership in the Communist Party was not *per se* a basis for exclusion. Petitioner was readmitted under the provisions of the then law. His readmission was not a commitment, binding upon a later Congress, that petitioner's past history could never be a criterion of who should be deemed an undesirable alien. See *Galvan* v. *Press*, 347 U. S. 522. Secondly, in the deportation proceedings, not only was petitioner's former membership in the Communist Party undisputed, but it was proved (in addition to petitioner's statements at the time of his readmission in 1938) by the dis-

[7] The prior statute, 8 U. S. C. (1946 ed.) 155 (b), had covered only those whose activities occurred after their own entry. It read:

"(b) Any alien of any of the classes specified in this subsection, in addition to aliens who are deportable under other provisions of law, shall, upon warrant of the Attorney General, be taken into custody and deported:

"(1) Any alien who, at any time within five years after entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

"(2) Any alien who, at any time after entry, shall have on more than one occasion, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien or aliens to enter or to try to enter the United States in violation of law."

closures in petitioner's alien registration forms (R. 19–20, 24) and his testimony in the course of his own efforts to obtain naturalization (R. 25–31).

3. The constitutionality of the statute was sustained in *Galvan* v. *Press*, 347 U. S. 522. The issue before this Court in *Rowoldt* v. *Perfetto*, No. 34, this Term, as to nominal membership in the Communist Party is not involved here, in view of the extensive participation and activity of petitioner who was a member for at least four years and a unit leader. The petition does not claim that he was no more than a nominal member (see Pet. 2, 12).

CONCLUSION

The decision of the court below is correct, and no conflict of decisions is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1957.

U. S. GOVERNMENT PRINTING OFFICE 1957